

Central Valley Regional Water Quality Control Board

Staff Report

Renewal of Conditional Waiver of Waste Discharge Requirements For Discharges Related To Timber Harvest Activities

March 2010

ISSUE

This staff report presents supporting information for Order No. R5-2010-____, renewal of *Conditional Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities* (Waiver).

The Regional Water Board is charged by the California Water Code (CWC) with protecting the quality of ground and surface waters of the State within the Region. One of the methods by which the quality of surface and ground waters are protected is by the issuance of Waste Discharge Requirements (WDRs). Section 13263 (a) of the CWC requires the Regional Water Board to prescribe WDRs for any existing or proposed waste discharge within its jurisdiction. WDRs implement relevant water quality control plans to protect the uses of receiving waters, and consider, among other things, the beneficial uses of receiving waters, the appropriate water quality objectives that protect those uses, consideration of other waste discharges, and nuisance prevention. WDRs can be issued to a specific person or entities or for categories of discharge that satisfy certain criteria as discussed in Section 13263(i) of the CWC.

Section 13269 of the CWC gives the Regional Water Board the authority to waive the requirement that dischargers obtain WDRs for specific discharges and specific types of discharges, if waiving such requirements is found to be in the public interest and certain conditions are satisfied. A waiver eliminates the requirement to obtain WDRs, but the discharger(s) must still comply with applicable requirements of the Water Code, the Basin Plan and other applicable plans and policies. The Regional Water Board can also waive the requirement to submit a report of waste discharge. Waivers are at the discretion of the Regional Water Board, which also has the authority to terminate waivers at any time. The existence of a categorical waiver does not excuse a discharger from any other legal requirements nor does it permit the violation of water quality objectives or the impairment of beneficial uses.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) in April 2005, adopted Resolution R5-2005-0052, *Conditional Waiver Of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities*. The Waiver, as adopted, had an expiration date of 31 March 2010. The Waiver established eligibility criteria and conditions for timber harvest activities conducted on private lands under an accepted Notice or approved Timber Harvest Plan (THP) submitted to the California Department of Forestry and Fire Protection (CAL FIRE) and timber harvest

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and fuels reduction projects conducted by the US Department of Agriculture, Forest Services (USFS).

To adopt the Order and Waiver, CWC Section 13269 requires that the Regional Board find that the Waiver *“is consistent with any applicable state and regional water quality control plan and **is in the public interest.**”*

Staff recommends that the Regional Board renew the Waiver and its associated Implementation, Effectiveness and Forensic Monitoring and Reporting Program (MRP) for an additional five years.

REPORT OUTLINE

Following are discussion items to be addressed in this staff report. Additional information may also be presented during staff’s presentation to the Central Valley Water Board at the March 2010 board meeting.

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 - Harvesting on Federal Lands
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WAIVER BACKGROUND

Regional Water Boards are authorized by the Porter-Cologne Water Quality Control Act (Porter-Cologne) to conditionally waive WDRs for specific discharges or a specific type of discharge in certain circumstances. The Central Valley Water Board first exercised this authority with respect to discharges from timber harvest activities in 1982 when it adopted a waiver of WDRs for timber harvesting on private lands under a THP approved by CAL FIRE through the process delineated in the Forest Practice Rules (FPR) pursuant to the Forest Practice Act (FPA). This waiver of WDRs for timber harvest related discharges expired on 1 January 2003, pursuant to a 1999 amendment of California Water Code section 13269 that limited the duration of such waivers to a maximum of five years and permitted renewals of the waivers in five-year increments.

The first Central Valley Water Board waiver following the 1999 amendment to CWC section 13269 was initially developed as a collaborative effort by staff of the four regional boards where timber harvest activity is significant (North Coast, Lahontan, Central Coast and Central Valley). The Central Valley waiver was adopted in January 2003 (Resolution No. R5-2003-0005) after several workshops and public hearings. Proposed waiver criteria and conditions were modified by staff (in response to agency, industry and public input) and by the Central Valley Water Board (following testimony and comments at the hearing) prior to adoption. The resulting waiver provided a regulatory mechanism that assisted staff in the review of timber harvest proposals and in the regulation of waste discharges associated with timber harvest activities. The main premise of the 2003 waiver was to augment, with respect to water quality, the existing (and generally well-staffed) timber harvest regulatory programs administered by CAL FIRE and the USFS. This augmentation was accomplished by requiring compliance with detailed and category specific eligibility criteria and conditions in Attachment A and by requiring implementation of any and all additional management measures necessary to comply with the Central Valley Water Board's Basin Plan.

The 2003 waiver included a provision that allows the Executive Officer to require compliance with a monitoring program on a case-by-case basis. The waiver further defined monitoring to include all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality including instream monitoring, watershed trend monitoring, active inspections, hillslope and effectiveness monitoring and project completion inspections.

The 2003 waiver was soon petitioned to the State Water Resources Control Board (State Water Board) by the timber industry (claiming the waiver was unnecessary and burdensome) and by the environmental community (claiming the waiver was inadequate and that adoption of WDRs was necessary). In January 2004, the State Water Board

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adopted Order No. WQO 2004-0002 which presented findings and conclusions with respect to the issues raised in both petitions. The State Water Board essentially affirmed the appropriateness of the 2003 waiver. WQO 2004-0002 summarizes the position of the State Water Board by stating: *"The Waiver includes specific criteria to ensure compliance with requirements of the Basin Plan and to prevent discharges that may substantially impact water quality. Further, the Regional Board's actions were consistent with State Board policies and procedures and the terms of the Waiver do not exceed the Regional Board's statutory authority."*

The environmental petitioners subsequently filed suit in superior court seeking to set aside the 2003 waiver and the State Water Board order. The Superior Court Ruling denied the petition and states: *"...the eligibility criteria and conditions provide a level of regulatory control for waste discharges associated with covered timber harvest activities that distinctly exceeds the level of control existing in January 2003 when the waivers were adopted"*, and *"...the evidence in the record establishes that the waiver projects are regulatory systems that impose an improved level of control upon timber harvest activities to prevent waste discharges from degrading water quality and beneficial uses, including aquatic and wildlife habitat."*

The Central Valley Water Board in January 2005 adopted Resolution R5-2005-0004 that extended the waiver to 30 June 2005 and directed staff to develop a new or renewed waiver that fully complied with the 2004 amendments to CWC Section 13269.

CWC Section 13269 was amended in 2004 to require that new or renewed waivers include individual, group, or watershed-based monitoring unless the Regional Board waives that requirement for discharges that do not pose a significant threat to water quality. CWC Section 13269 (a)(2) and (3) state in part;

"(2) The conditions of the waiver shall include, but not be limited to, the performance of individual, group, or watershed-based, monitoring except as provided in paragraph (3). Monitoring requirements shall be designed to support the development and implementation of the waiver program including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public".

"(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality".

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On 28 April 2005, the Central Valley Water Board adopted Resolution R5-2005-0052, *Conditional Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities* (Waiver). The Waiver established eligibility criteria and conditions for timber harvest activities conducted on private lands under an accepted Notice or approved THP submitted to the CAL FIRE and timber harvest and fuels reduction projects conducted by the USFS. The Waiver also included a MRP as required by Sections 13267 and 13269 of the CWC.

Waivers, as required by section 13269 of the CWC, must be reviewed and revised as necessary within five years from adoption. If the Central Valley Water Board renews the Waiver for five years as recommended at the March 2010 meeting, the renewed Waiver would have an expiration date no later than March 2015.

STATE OF TIMBER HARVESTING IN THE CENTRAL VALLEY REGION

Silvicultural activities or timber harvesting operations are of significant economic importance in the Central Valley Region. Of the approximately 100 million acres in California there are roughly 33 million forestland acres. Of the 33 million forestland acres, 57% is under federal ownership, 40% is under private ownership and 2% is under state ownership. Approximately 50% of California's timberlands (>16 million acres) are located in the Central Valley Region. Statewide annual commercial harvest (total timber volume cut on both non-federal and federal lands) is slightly more than 1.3 billion board feet (net).

To harvest timber, ground (soil) is disturbed by the construction of roads, stream crossings, landings where logs are loaded onto trucks, tractor skid trails and other areas where equipment hauls or drags logs, and areas where heavy equipment is used for "site preparation" prior to replanting trees. Although there are numerous silvicultural methods employed in the woods, they can be broken down into two major types; "uneven-aged" stand management (selection or thinning) and "even-aged" stand management (clear-cut or its equivalent). Historically, both timberland management methods have been used extensively in the Central Valley Region (USFS has allowed even-aged management in the past). The timber industry maintains that "even-aged" management does not result in increased discharge of sediment and other pollutants or increased stream temperatures if harvesting is conducted in accordance with existing FPR pursuant to the FPA.

Harvesting on Non-Federal Lands

In general, the number of THPs submitted annually to CAL FIRE for private lands have decreased over the past several years. However, many of the THPs submitted are for very large acreages (frequently exceeding 2000 acres).

According to CAL FIRE, the number of statewide harvest documents (THPs and other non-discretionary notices of timber harvesting) has varied in the last 10 years with a

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high of 4,582 and a low (in 2009) of 2,366. The 10 year average is 3,528 harvest documents. The 10 year average acreage for all harvest documents valid in any one year is approximately 3,000,000 acres. While the number of harvest documents has declined recently, it is relevant to note that the average acreage covered per document in the mid 1990's was 480 acres, this decade, 2000-2009, the average acreage per document is between 800 and 1,000 acres.

For informational purposes and to further delineate the differences between the non-federal and federal timber harvest processes, the non-federal THP process as operated through CAL FIRE is described herein (note the relatively short time frames for plan review, field inspection, approval and completion):

- Once a THP is submitted to CAL FIRE, a number is assigned to the THP and CAL FIRE distributes copies, via paper or electronic posting, to all state and federal reviewing agencies (Central Valley Water Board staff pre-screens the submittals at this time to decide which THPs require a pre-harvest inspection). A Notice of Intent (to harvest) is then sent to landowners within 300 feet of the THP and the office of the county clerk. A Notice of Submission is sent to anyone who has requested in writing, notification when a THP is submitted to CAL FIRE.
- A first (multi-agency review team) review of the THP is conducted to assess whether the THP conforms to the FPR pursuant to the FPA. This occurs within 10 days of submittal. Any incomplete applications are returned to the Registered Professional Forester (RPF) who prepared the THP.
- Once all review team concerns are clarified and the THP is deemed complete, it is officially "filed". A Notice of Filing is sent to the person who submitted the THP, the office of the County Clerk, and to anyone who has requested in writing, notification of filed THPs. The RPF must answer any questions or concerns raised by the review team before the THP is processed any further.
- CAL FIRE schedules a pre-harvest inspection, if one is determined to be necessary, to examine the proposed logging site within 10 days from filing. Pre-harvest inspections can require several hours to several days to complete. Recommendations are finalized and sent to CAL FIRE. (Central Valley Water Board staff attends approximately 50 percent of these scheduled inspections)
- Within 20 days from the close of the pre-harvest inspection, a second review team meeting is held to discuss the pre-harvest inspection reports and to finalize any recommendations or changes needed for the THP.
- Final recommendations are then sent to the RPF for response. CAL FIRE prepares and mails a written response to each person or group who submits a public comment on a THP (and sends copies to all involved state and federal agencies).
- A 30 day public comment period starts upon completion of the pre-harvest inspection, if required. Frequently, the public comment period is extended if additional study is needed for a specific THP issue. CAL FIRE responds in writing to each public comment received within 15 days of the close of public comment period and prior to approval/denial.

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- Two processes are available to the responsible agencies should they disapprove a recommendation for approval by CAL FIRE. The Regional Board may file a “non-concurrence” letter with CAL FIRE. Or the State Water Board may file a “Head of Agency Appeal” to the Board of Forestry.
- Once a THP is approved the timber owner has three years, with additional extensions available pursuant to the Public Resources Code, within which to complete operations. Before operations commence, the landowner must notify CAL FIRE of the start of operations (every calendar year). CAL FIRE will periodically inspect the logging operations to ensure compliance with the approved THP and FPR (Central Valley Water Board staff attends these “active” inspections when feasible).
- CAL FIRE enforcement actions range from administrative notices of violation, assessment of civil penalties and fines, and even criminal proceedings through the county court system. Action may also be taken against the licenses of the timber operator and/or the RPF associated with the operation.
- When a THP operation has been completed, the timber owner has the responsibility to submit a completion report to CAL FIRE. CAL FIRE then inspects the area, within 6 months, to certify that all rules were followed (Central Valley Water Board staff attend these “completion” inspections when feasible). In addition, up to 10% of the THPs approved in any given year are subject to Forest Practice Rules Implementation & Effectiveness Monitoring (FORPRIEM) conducted by CAL FIRE.
- Maintenance of roads related to the THP is required for a period of one year, but not more than three years, from the date of completion report submittal. CAL FIRE periodically makes maintenance inspections during this period to ensure conformance with the FPR.
- Stocking (stocking refers to the density of trees in a stand of timber) is required for even-aged managed areas and must be at FPR required levels within 5 years of notice of completion. During the time between the notice of completion and the meeting of stocking requirements, the landowner is responsible for maintenance of drainage facilities. CAL FIRE periodically inspects the plan area to ensure conformance with the FPR.

By contrast, the non-discretionary Emergency and Exemption process is much less complex and the time frames for review and operations are much shorter. There are very specific rules in the FPR that determine what activities can and cannot take place under an Emergency or Exemption notice. Emergencies may include, but are not limited to, those harvest activities that are necessary to remove fire-killed or damaged, insect infested or diseased timber, or to undertake emergency repairs to roads. Emergencies allow for the immediate commencement of operations upon acceptance of notification from CAL FIRE and have a working time frame of 365 days with no extensions available.

Exemptions cover a much wider array of timber harvest activities, including fire-safe harvest within 150 feet of buildings, Christmas tree harvest, fuel-hazard reduction

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harvest, harvest of dead, dying or diseased trees, and the conversion of timberland to another use on less than three acres. Exemptions have a working time frame of 120 to 365 days (depending on the type) from the date of notice acceptance by CAL FIRE.

Harvesting on Federal Lands

Current USFS timber harvest activities in the Central Valley Region consist primarily of timber sales and fuels reduction projects. Timber sales generally consist of commercial thinning (removal of smaller trees), plantation thinning, hazard tree removal along roadways and campground areas, and fire salvage operations (removal of merchantable timber from areas devastated by forest fires). Fuels reduction projects generally consist of mechanical mastication work, hand-clearing work (including thinning and piling), and controlled under-burning. All timber harvesting related operations submitted to the Central Valley Water Board for coverage under the Waiver are individually screened relative to their potential threat to water quality.

Timber sales, fuels reduction projects and other timber harvesting type projects proposed on USFS lands must go through a National Environmental Policy Act (NEPA) review and approval process prior to implementation. Initially, USFS staff list proposed projects in the Forest-specific Schedule of Proposed Actions (SOPA). SOPAs are available on the web for public review and are also sent to the Central Valley Water Board and other interested parties on a quarterly basis. USFS staff also sends individual scoping notices to the appropriate Regional Board (and other interested parties) with maps and project descriptions for review. The USFS then prepares an Environmental Assessment (EA), Environmental Impact Statement (EIS), or a Categorical Exclusion (CE) document and requests agency and public comment on the proposed actions. After receiving comments, the USFS makes a decision to implement the project as proposed or with revisions. The EA and EIS documents may be appealed within the USFS process. CEs cannot be appealed, but can be litigated if the public is concerned with the projects proposed. CEs are required to have public participation during the planning stage of the project, which is accomplished through scoping.

Most of the timber harvest projects being implemented today on USFS lands in the Central Valley Region were approved through the EA or EIS processes under the Sierra Nevada Forest Plan Amendment, the Herger-Feinstein Quincy Library Group Forest Recovery Act and the Northwest Forest Plan.

State Water Board/USFS Water Quality Management Plan (WQMP)

In 1981, pursuant to CWA section 208, the State Water Board certified the USFS document titled "Water Quality Management for National Forest System Lands in California" including its BMPs. Since 1981, there have been a number of changes affecting the WQMP including changes in the Water Boards' authorities and changes in the dominant types of pollution-producing activities (e.g., off-road vehicles, grazing) on USFS lands. These changes have prompted the State Water Board and USFS to begin the process of revising the WQMP. The intention is that the revised WQMP will include

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a process for addressing regional differences and will become the basis for a statewide waste discharge requirement or conditional waiver of waste discharge requirements for the set of activities covered under the revised WQMP.

The goal is for the final revised WQMP and the statewide regulatory approach to be ready for State Water Board consideration by January 2011. It is unknown exactly how the WQMP process and the proposed statewide waste discharge requirements or waiver of waste discharge requirements, if adopted will affect the proposed Central Valley Water Board's Waiver.

United States Environmental Protection Agency (USEPA) Certification

USFS "best management practices" (BMPs) are generally more stringent than the Forest Practice Rules. Pursuant to Section 208 of the federal Clean Water Act, the EPA has approved the State Water Board's certification of the USFS's WQMP, and the practices therein as "best management practices". EPA has not approved the State Water Board's certification of the California FPR and administering processes for regulation of timber harvest activities on nonfederal lands in California.

WATER QUALITY ISSUES

Timber harvesting and associated activities can result in the discharge of sediment (earthen materials in the form of silt, sand, clay and rock), organic debris (slash, sawdust, and bark), and chemical pollutants (silvicultural pesticides and chemical dust suppressants). In addition, some studies have shown that logging can increase water temperature and cause an increase in peak stream flow. Sediment induced water quality impacts occur when earthen materials, transported by surface or mass-wasting erosion, enter a stream system. Several studies, including the Hillslope Monitoring Program generated by the Board of Forestry's Monitoring Study Group, conclude that road construction and stream crossings account for the majority of sediment discharged from timber harvest operations. Operations conducted during the winter may have a greater potential to discharge sediment that can adversely impact water quality than those conducted during drier periods. The type of timber harvesting, i.e. tractor, cable or helicopter, and the harvest method can also affect the quantity of sediment and organic debris discharged. Chemical pollutants can be discharged via stormwater runoff from roads treated with oils or other dust suppressing materials and direct application or runoff from pesticides (herbicides) applied to eliminate or reduce non-commercial plant species competing with tree growth. Sediment is considered the pollutant that has the most potential to adversely impact water quality in forested watersheds within the Central Valley Region. Although there is potential for adverse temperature increase and deleterious pesticide (herbicide) concentrations in surface waters, resulting from timber harvesting activities, limited studies in the forested watersheds of the Central Valley Region indicate that sediment discharges are most likely to violate water quality standards. Sediment discharges in forested watersheds can also be the result of other human related activities including cattle grazing,

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hydroelectric power generation, residential development, non-timber related road construction and maintenance and off-road recreational activities. Sediment is also a naturally occurring constituent that can impact water quality in the absence of human related land disturbance activities. Natural sediment discharges are highly variable in time and space, since they are generally associated with highly variable hydrologic events (rainfall and/or rapid snowmelt). These factors make it difficult (and in some instances impossible) to determine the source of sediment in receiving waters in forested watersheds or to determine whether a specific activity is causing a violation of Basin Plan narrative or numeric objectives.

Considering that the Central Valley Region contains approximately one-half of the state's forested watersheds, very little data quantifying sediment concentrations or sediment related impacts exists. Monitoring and studies in the North Coast Region have indicated that logging can affect water quality and impair beneficial uses. However, geologic and hydrologic conditions in the North Coast Region are quite different from those in the Central Valley Region. The slopes on which timber is harvested and roads constructed are generally not as steep, the soils are generally less erodible and annual rainfall is much less in the Central Valley Region. Historic timber operations (pre-1970) are known to have caused isolated water quality impacts. Current practices are more protective of the resources, but it is unknown whether today's practices are always fully protective of water quality in the Sierras and Cascades.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Central Valley Water Board adopted a negative declaration pursuant to the California Environmental Quality Act (CEQA) (PRC 21000 et seq.) on 30 January 2003 with respect to Resolution R5-2003-0005. The CEQA regulations found in Title 14 California Code of Regulations (CCR) Section 15162 and 15163 specify the circumstances under which the Regional Board must prepare a subsequent or supplemental environmental document. This action to renew the Waiver does not require preparation of a subsequent or supplemental environmental document pursuant to Title 14 CCR Sections 15162 or 15163. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in Title 14 CCR Section 15162(a). The previous environmental documents described the potential environmental effects of timber harvest activities; such potential effects have not changed since adoption of the Waiver in 2003. The Central Valley Water Board does not approve timber harvest projects; it only regulates discharges of waste that are caused by such activities. This conditional Waiver contains conditions that, if complied with, will prevent significant impacts to waters of the state. These conditions are the same as those in the existing waiver.

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CAL FIRE, as lead agency for approving timber harvesting in the state, is required to comply with the CEQA when it approves timber harvest activities. This includes the consideration of cumulative environmental effects. Similarly the USFS is required to comply with the National Environmental Policy Act (NEPA).

Cumulative Effects on Non-Federal Lands

The current Forest Practice Rules (FPR) adopted by the State Board of Forestry and Fire Protection and administered by CAL FIRE require a cumulative impacts assessment for proposed THPs. The requirements are contained in FPR Technical Rule Addendum No. 2, and include a description of past and future projects in the affected "Watershed Assessment Area", a detailed map of the proposed project, a map of the past (within the last ten years), present and reasonably foreseeable probable future projects on land owned or controlled by the timberland owner of the proposed project, harvest methods for each of those projects and identification of any known, continuing significant environmental problems caused by past projects. In addition, the Appendix to Technical Rule Addendum #2 sets forth specific factors to be considered in evaluating cumulative impacts including:

- Watershed resources
- Sediment effects
- Water temperature effects
- Organic debris effects
- Chemical contamination effects
- Peak flow effects
- Watercourse condition
- Soil productivity and others related to soil loss.
- Pools and riffles
- Large woody material
- Near-water vegetation
- Downed large woody debris
- Multi-story canopy
- Road density and others related to terrestrial wildlife needs.

Cumulative Effects on Federal Lands

One of the eligibility criteria for the Waiver requires the USFS to conduct a cumulative watershed effects (CWE) analysis and include specific measures needed to reduce the potential for CWE in the project. One of the methods utilized for evaluating CWE is the Equivalent Roaded Area (ERA) analysis. The ERA method relates the impacts expected from project activity to that expected from roads and then presents the information as the percentage of basin in roaded area. That percent is compared to a Threshold of Concern (TOC) identified for a particular watershed (usually 10-18%). If the threshold is approached or exceeded, then activities are reviewed to determine

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whether they should be modified or delayed, or whether existing conditions could be improved to lower the ERA values.

WAIVER VS. WASTE DISCHARGE REQUIREMENTS

The adoption of individual WDRs or the issuance of general WDRs for nearly 2,000 timber harvest projects annually would require staff to switch from the current “proactive approach” to a “reactive approach” with respect to regulating waste discharges associated with timber harvesting. Staff, because of the formal requirements of individual WDR issuance, would be required to spend considerable time processing reports of waste discharge, preparing and circulating tentative WDRs for comment and finally issuing adopted WDRs for all of the timber proposals submitted annually. For the many timber harvest proposals that are short term in nature (120 days for CAL FIRE Exemption Notices for example) the process for issuance of individual WDRs may take longer than the actual timber harvest activity itself, and the WDR process could cause unwarranted delays. The processing requirements of individual WDRs would curtail staff’s ability to conduct pre-harvest inspections and the result would be little, if any, “proactive” protection of water quality. Adoption of WDRs would change the program from one where management practices are actively examined and evaluated in the field to one that is administered from the office.

Similar to the waiver, individual or general WDRs would require that discharges associated with timber harvesting comply with all applicable Basin Plan requirements. WDRs could also require compliance with a monitoring and reporting program similar to that required by the Waiver. The Waiver requires dischargers to implement certain management measures as conditions of qualifying for waiver eligibility. Required implementation of certain management measures specified in the various Waiver categories or determined during pre-harvest inspections could not be included in individual WDRs as CWC Section 13360 states:

“No waste discharge requirement....may specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement...and the person so ordered shall be permitted to comply with the order in any lawful manner.”

The sole use of individual WDRs to regulate waste discharges from timber harvesting would preclude the ability to require implementation of specific management measures available in the Waiver. However, general WDRs could include eligibility criteria based on management measures similar to those in the current Waiver. Dischargers that fail to implement the management measures would have to apply for individual WDRs, as is the case with the Waiver. Staff will continue to consider the use of individual or general WDRs for those timber operations that chose not to enroll in the Waiver or where staff determines that the issuance of WDRs is appropriate. Staff has drafted general WDRs

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for use in these instances and will recommend the Central Valley Water Board consider their adoption when necessary.

Enforcement of a waiver and WDRs is essentially the same under the California Water Code. Violations of Waiver criteria and conditions and the requirements of WDRs are enforced pursuant to CWC section 13350, which authorizes the Central Valley Water Board or a court to assess administrative civil liability. In either case, the Central Valley Water Board may issue cleanup and abatement orders to address discharges or threatened discharges of waste to waters of the state. Staff has also found that the possibility of losing Waiver eligibility is a significant deterrent in improving harvest practices that would otherwise threaten water quality.

PRESENT WAIVER PROGRAM

The number of staff assigned to timber harvest review has not changed significantly since adoption of the Waiver in 2003. There are currently only 5.7 PYs allocated to the program, which receives nearly two thousand timber harvesting related proposals annually. Funding was decreased by approximately 20% in FY 2008/2009 compared to the 2007/2008 allocation. The mandated furloughs have had a significant impact on the ability of staff to meet CAL FIRE deadlines for inspections. Additional funding cuts are anticipated in FY 2010/2011 based on the State's budget situation. Despite these recent cuts to an already resource deficient program, staff assigned to the Central Valley Water Board's timber program has been effectively working to assure compliance with the Waiver and to maximize staff's efforts to protect water quality from timber related discharges. The following is a summary of Timber Waiver related activities presently performed by staff:

- Waiver processing for private lands
- Pre-harvest inspections on private lands
- Waiver processing for federal lands
- Pre-sale inspections on federal lands
- Participation in CAL FIRE THP review process (including PHI inspections)
- Waiver compliance inspections
- Limited water quality monitoring and GIS system maintenance
- Participation in BOF committees, subcommittees
- Coordination with SWRCB, CAL FIRE and other Regional Boards
- Outreach to industry and watershed groups

Current Waiver Enrollment

There are more than 603 projects currently enrolled under Waiver Categories 3 and 4 that if the Order is adopted would require re-enrollment and the one-time fee.

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Table 1. Break-down of activities covered under the Waiver from 2003-2008.

		Acreage	Waivers	Harvest Docs
Private (Industrial)	THP/NTMP	638,000 total (~106,000 per year)	1,185 total	~200/yr
Private (Industrial)	EM/EX	1.8 million total (~360,000 per year)	786 total	~200/yr ¹
USFS	Timber Sales	1 million total (~204,000 per year)	479 total	~100/yr

Waiver Effectiveness

As first envisioned in the 2003 Waiver and with the renewal in 2005, the Waiver and MRP have been proven effective in allowing staff to focus on “high-risk” timber harvest proposals without undue delays or redirection of limited staffing resources towards processing WDRs. It has continued to allow staff to spend significant time in the field preventing impacts to water quality as opposed to reacting to impacts after the fact. The Waiver allows staff to pursue a “proactive approach” and focus on the pre-harvest review and follow-up of the most critical timber harvest proposals. Staff pre-screens THPs and USFS projects and selects those that require an inspection before the project receives final approval from CAL FIRE or the USFS. Specific Waiver conditions (for private lands) require the discharger to agree to implement additional management measures resulting from staff’s participation in the pre-harvest inspection or the conditional waiver for the THP will not be granted. In 2009, this applied to 56 percent of THPs submitted on private lands and included most of the high threat proposed timber operations. The remaining THPs and notices must still comply with all specific criteria and conditions specified in the Waiver

The requirement that the discharger must implement additional management measures determined during a staff attended pre-harvest inspection or in accordance with specific criteria and conditions has resulted in improved timber harvest plan submittals. Of the 72 THPs pre-harvest inspected by staff in calendar year 2009, most included significant modifications that reduced their potential to discharge sediment that may not have occurred without either staff’s participation or the requirements of the Waiver. Examples of such modifications include:

- Rerouting, elimination or improvement of roads and landings
- Elimination or improvement of watercourse crossings
- Modification of harvesting methods
- Avoidance of or mitigation for unstable areas
- Elimination of heavy equipment in many sensitive areas

¹ On average, approximately 1600 Emergency and Exemption Notices are received, some types of which are automatically enrolled in the Waiver and the rest require hands-on processing (ie. the ~200)

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- Increased soil stabilization efforts
- Increased watercourse protection zones (buffers)
- Removal of high risk areas from operations
- Elimination or restriction of winter operations
- Increased protection for the beneficial uses associated with wet areas, meadows, springs and seeps.

For timber harvest proposals that staff does not inspect pre-harvest, there have been documented improvements (implementation of additional management measures) in submittals approved by CAL FIRE including:

- Increased stabilization of slopes
- Increased stabilization of active erosion sites
- Rocking of roads with the potential to discharge sediment to surface waters
- Increased Class III watercourse protection
- Improvement of watercourse crossing mitigation measures
- Increased protection of domestic water supplies and supply-lines.

These improvements (implementation of additional management measures) are, in general, in excess of the requirements in the FPR and are a result of implementation of the Waiver. These additional measures are also proactive in that they provide for a reduction in the sediment generating potential of the proposed timber harvest activity.

The efficiency afforded staff in regulating timber harvesting under the Waiver program is quite evident, as staff can focus available time on the most critical timber proposals and allow specific Waiver criteria and conditions to be applied to the remainder. Central Valley Water Board staff will continue to randomly spot check and inspect active timber operations (that are not pre-harvest inspected) to assure Waiver compliance. The industry is aware that a conditional waiver may be terminated for any timber operation that fails to comply with the specific criteria and conditions in the Waiver. The application of individual monitoring to all timber harvest activities further ensures the effectiveness of the Waiver as a regulatory mechanism.

MRP Compliance

The Waiver, in its current form, has been in effect since May 2005 and the first Annual Reports required by the MRP began arriving in July 2006. Since then, compliance with the Waiver and MRP has increased steadily each year. While not at 100% compliance, program staff has consistently increased discharger understanding of the policy and is confident that compliance levels will continue to rise.

The MRP reporting requirements have provided staff with important site-specific information on water quality impacts, enabling staff to make timely field inspections and ensure that appropriate mitigations are installed immediately if a threat is found in order to prevent further impacts. Before the MRP was adopted the only opportunity for staff to

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become aware of discharges, was if the site was encountered during a random field visit or a complaint was filed. The MRP provides a significant improvement for the protection of water quality.

MRP Effectiveness

Staff began implementing the MRP associated with the existing Waiver in May 2005, the first required Annual Reports were submitted in July of 2006. So, while the existing Waiver has been implemented for five years, the information provided by the MRP requirements for reporting has only been received for four years. In addition, two of the four years have been characterized as drought years. Since the effectiveness of best management practices (BMPs) are highly storm specific, data provided during drought years provides limited information on the effectiveness of our Waiver in protecting water quality. Furthermore, considerable time lags (up to decades) can exist between onsite erosion and subsequent impacts to downstream receiving waters. Given these constraints, four years of Annual Reporting data is not of sufficient duration to provide meaningful results or conclusion. If the Waiver and MRP are renewed by the Central Valley Water Board, it would allow for continuing Annual Reporting cycles that would provide staff with the necessary data to evaluate the effectiveness of the Waiver in protecting water quality.

EXISTING MONITORING EFFORTS

CAL FIRE, the USFS and multiple timber companies throughout the state are actively conducting monitoring to determine the water quality and watershed effects of existing and past timber harvesting. The Central Valley Water Board staff has conducted sporadic monitoring of timber operations, but due to a lack of resources this has been very infrequent. Though the Regional Board's Surface Water Ambient Monitoring Program (SWAMP) monitoring program has funded some third party monitoring of watersheds that have some form of timber harvesting, most of this effort is focused on surface waters in the "valley" or "below the reservoir level." Considering the number and extent of valuable surface waters in the Sierra, Cascade and Coast mountain ranges in the Central Valley Region the existing level of monitoring is far from comprehensive. Following is a summary of active field level monitoring programs that focus on hillslope conditions, instream conditions and water quality impacts from timber harvesting.

CAL FIRE and the USFS are conducting agency sponsored monitoring as follows:

- USFS, Pacific Southwest Research Station, Kings River Experimental Watersheds– Monitoring of forest ecosystems (SWRCB Proposition 50)
- BOF – Monitoring Study Group - Hillslope Monitoring Program and Interagency Mitigation Monitoring Program

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- CAL FIRE – Forest Practice Rules Implementation & Effectiveness Monitoring (FOPRIEM)
- USFS – BMP Evaluation Program (each National Forest)
- USFS – Stream bioassessment and physical habitat monitoring (each National Forest)
- USFS – Aquatic and riparian effectiveness monitoring (watershed scale) conducted under the Northwest Forest Plan
- USFS – Pesticide monitoring at selected application sites

Industry sponsored monitoring is being conducted as follows;

- Sierra Pacific Industries – Water column monitoring at Judd Creek and Howard Springs Creek (Tehama County), and San Antonio Creek (Calaveras County)
- W.M. Beaty – Fire salvage monitoring (Shasta County)
- Roseburg – Water column monitoring at various sites (Shasta County)
- Hearst Corporation – Monitoring associated with their Programmatic Timber EIR

In addition, hillslope effectiveness and/or water column monitoring is being conducted in several streams in the Sierras, Cascades and Coast Range by local watershed groups, by university researchers (Lee H. MacDonald, Colorado State University (funded by the USFS) and sporadically (as resources allow) by Central Valley Water Board timber harvest staff.

TIMBER HARVEST ACTIVITIES MONITORING ISSUES

Resolution R5-2005-0052, adopted by the Central Valley Water Board in April 2005, included Monitoring and Reporting Conditions (Attachment B) and the Monitoring and Reporting Program (Attachment C). These satisfy Section 13269, subdivision (a)(2), which requires:

individual, group, or watershed-based monitoring ... Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

Background on Monitoring Conditions

Highly structured and quantitative monitoring in forested watersheds can be logistically, analytically, and economically burdensome for all but the largest landowners. Often times, management-related sediment pulses may occur during the rising limb of the hydrograph, and weather and/or access issues may preclude sampling during this critical time period. The temporal variability in sediment transport can be more than an order of magnitude at the short-term, inter-event, and annual times scales – suggesting that the duration of the monitoring program must be sufficient long (i.e., well beyond the life of a typical timber harvest plan) to capture this variability (Bunte and MacDonald, 1995)². State-of-the-art automated sampling methodologies, such as turbidity threshold sampling (TTS), can have startup costs of more than \$17,000 and reoccurring annual costs of more than \$5,000³. Given these constraints, the development of Waiver monitoring and reporting conditions (requirements) focused on monitoring methodologies that were relatively easy to implement by a wide variety of landowners, and were cost-effective for determining whether timber harvest activities were impacting water quality. For these reasons, several qualitative monitoring methods were developed for pollution prevention, identification, and abatement.

Monitoring Types

Staff actively participated in a Monitoring Work Group (CDF, State Water Board, RWQCBs, and California Geological Survey) charged with developing a monitoring memorandum of understanding (MOU) to provide consistency in the application of monitoring requirements for timber operations on private lands. The terms and monitoring types defined in the MOU Monitoring Work Group final draft report form the basis of the proposed monitoring and reporting conditions listed in Attachment B and the monitoring requirements specified in the draft Monitoring and Reporting Program for Individual Dischargers. The following is a description of the qualitative “field verification” monitoring types and their role in answering regulatory questions being posed by staff:

Agency Monitoring - Agency monitoring is required for all Waiver categories, but since it is done by regulatory it requires little effort by landowners. Agency monitoring is monitoring conducted by the California Department of Forestry (CDF) and the Regional Board on private lands, and the United States Forest Service (USFS) on federal lands. These agencies evaluate compliance with CDF’s Forest Practice Rules or USFS best management practices (BMPs).

Implementation Monitoring - Implementation monitoring is typically required for Waiver categories 2 through 5. Implementation Monitoring is the most important type of

² Bunte, K and L.H. MacDonald. 1995. Detecting change in sediment loads: where and how is it possible? P. 253-261 in Effects of Scale on Interpretation and Management of Sediment and Water Quality. Proceedings of a Boulder Symposium, July 1995. IAHS Publ. no. 226.

³ http://www.fs.fed.us/psw/topics/water/tts/tts_budget_est.pdf

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monitoring and consists of detailed visual monitoring of whether Best Management Practices (BMPs) were implemented prior to the rainy season. According to MacDonald⁴ et al. (1991), “many believe that implementation monitoring is the most cost-effective means to reduce nonpoint source pollution because it provides immediate feedback to the managers on whether the BMP process is being carried out as intended.” Implementation Monitoring performed at the hillslope scale, and is conducted by the discharger and by regulatory agencies during compliance or completion inspections.

The questions to be answered through Implementation Monitoring include:

- Are timber harvest activities being carried out as planned and in full compliance with Waiver criteria and conditions?
- Are management practices being implemented as designed?

Early results from implementation monitoring suggest high rates of implementation for various BMPs related to the prevention of impacts to water quality. In addition, narrative accounts from annual reporting suggest that problems are often fixed before the start of the rainy season.

Effectiveness Monitoring – Effectiveness Monitoring is generally required for Waiver categories 2 through 5. Effectiveness monitoring consists of monitoring subsequent to harvest to evaluate whether particular management measures are or were effective at achieving desired results (i.e., were BMPs effective in preventing water quality impacts?). Effectiveness Monitoring is applied at the project scale and/or the sub-watershed scale. Effectiveness Monitoring is generally conducted by the discharger and by regulatory agencies during site inspections and associated with monitoring programs designed to evaluate regulatory rule effectiveness.

The questions to be answered through Effectiveness Monitoring include:

- Are the implemented management measures effective at achieving desired results?

Early results from effectiveness monitoring suggest that most BMPs are effective in preventing significant pollution during below average rainfall years. Anecdotal evidence suggests that the learning achieved through effectiveness monitoring has improved BMP design and implementation in future years.

Forensic Monitoring - Forensic monitoring is generally required for Waiver categories 3 and 4, and for Notice of Emergency Timber Operations related to fire salvage. Forensic Monitoring employs visual field detection techniques, water quality grab samples, and/or photo-point monitoring to detect significant pollution during or directly after significant

⁴ MacDonald, L.H., A.W. Smart, and R.C. Wissmar. 1991. Monitoring guidelines to evaluate effects of forestry activities on stream in the Pacific Northwest and Alaska. EPA/910/9-91-001, NPS Section, U.S. EPA Region 10, Seattle, WA. 166 pp.

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storm events. Forensic monitoring is a proactive way to identify and prevent impact to waters of the State.

The questions to be answered through Forensic Monitoring include:

- Are significant pollutant discharges (e.g., turbidity and sediment) visually detectable?
- Are there significant pollutant discharges resulting from timber harvest activities (e.g., failed management measures) that require timely remedial action to prevent impacts to water quality and beneficial uses?
- Are turbidity and/or sediment being transported (eroded) from the timber harvest area into waters of the State?

Results from forensic monitoring include violation reporting for failed BMPs and management measures. Violations have occurred in response to legacy management features (e.g. old skid trails), from installation of BMPs inappropriate to the site, and from localized high intensity precipitation events that have overwhelmed implemented BMPs. However, the occurrence of violations has been relatively infrequent.

Water Quality Compliance Monitoring - Water Quality Compliance Monitoring employs water column sampling to determine whether waste discharges (sediment, turbidity, temperature and pesticide concentrations) from timber harvest activities are in compliance with water quality control plan (Basin Plan) standards. Given the considerable temporal variation for standards such as suspended sediment, it is often necessary to collect pre-project data and/or establish reference or control sites to make compliance monitoring successful. Water Quality Compliance Monitoring is typically applied at the sub-watershed or project scale focusing on the effects of a single project for a period greater than the active life of the project. Water Quality Compliance Monitoring is required upon notice by the Executive Officer when there is a history of poor BMP implementation, a widespread failure of BMPs, and/or identified discharges of sediment, pesticides, and increases in water temperature that can cause a violation in the applicable water quality control plan. Water Quality Compliance Monitoring may also be required as a follow up to staff review of a Watercourse Assessment for “High Harvest” watersheds. Water Quality Compliance monitoring is generally the responsibility of the discharger but may be conducted by regulatory agencies in response to complaints or follow-up to detected violations.

The questions to be answered through Water Quality Compliance Monitoring by instream sample collection include:

- Are timber harvest activities impacting water temperatures and are Basin Plan temperature objectives being violated?
- Are timber harvest activities impacting water clarity and are Basin Plan turbidity or narrative sediment objectives being violated?

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To date no Water Quality Compliance Monitoring has been required under the Waiver.

Assessment and Trend Monitoring - Assessment Monitoring is used to characterize existing water quality or related stream conditions on a watershed scale at a discrete instant or over a defined time period. Trend Monitoring is used to characterize water quality conditions over time. Together, Assessment and Trend monitoring help to determine if individually minor timber harvest activities over time and space combine to create a cumulative watershed effect. Assessment and Trend Monitoring efforts are the most intensive and costly monitoring types and the monitoring, to be scientifically valid, must occur over a long period of time and take into account all waste sources and natural inputs in the watershed. Assessment and Trend Monitoring is usually conducted by the discharger but may in rare instances and when funds are available, be conducted by regulatory agencies.

Assessment and Trend monitoring may be required when significant and reoccurring violations of water quality objectives occur, when there is an identified immediate and long-term threat to downstream beneficial uses, or when harvesting occurs within or upstream of a 303(d) listed waterbody. Assessment and Trend monitoring is also required for “High Harvest” watersheds that meet the following criteria¹:

- 50 percent of the watershed area harvested and even-aged management prescriptions are greater than 10 percent but are less than 25 percent of the watershed area.
- 40 percent of the watershed area harvested and even-aged management prescriptions exceed 25 percent but are less than 50 percent of the watershed area.
- 30 percent of the watershed area harvested and even-aged management prescriptions exceed 50 percent of the watershed area.

The questions to be answered through Assessment/Trend Monitoring include:

- Are discharges from timber activities both past and present coupled with discharges from other land-use activities within a given watershed or sub-watershed causing an exceedence of Basin Plan water quality objectives?
- Are waste discharges from timber activities, both past and present, coupled with discharges from other land use activities resulting in instream conditions that adversely affect designated beneficial?

¹ The 30, 40, and 50 percent criteria cited above and in Attachment B was derived from recommendations included in the *Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat* prepared for Resources Agency and National Marine Fisheries Service by The Scientific Review Panel created under a 1998 MOU between these agencies.

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Several watersheds have reached or will soon reach the threshold for “High Harvest” watersheds. Staff is currently developing guidance for performing Assessment and Trend monitoring.

Monitoring and Reporting Program

The MRP is designed to be flexible in that a discharger needs to comply only with the section of the MRP that is applicable to its proposed timber harvest activity.

Applicability is determined by the specific criteria and conditions contained in Attachment B (Monitoring and Reporting Conditions). Following is a brief description of elements of the MRP.

Inspection Plan

The MRP describes, separately, the requirements for conducting Implementation, Effectiveness and Forensic Monitoring. The MRP requires the discharger to prepare and implement an Inspection Plan that includes a site map that depicts monitoring points (inspection locations) for both visual monitoring and photo-point monitoring. Requirements for photo-point monitoring are described including required delineation of photo-points in the field by some form of permanent marking. The Inspection Plan must be maintained and updated by the landowner as needed and must be submitted to the Central Valley Water Board upon request.

Inspection Schedule

The MRP specifies the time frames for conducting the various types of monitoring inspections.

Implementation inspections shall be conducted by **November 15 of each year** where winter operations are not proposed and twice, once **by November 15** and once **immediately following winter period operations** where winter operations are conducted.

Forensic Monitoring inspections shall be conducted once, **during or within 12 hours following a 24-hour storm event of at least 2 inches of rainfall** after the accumulation of at least 10 inches of rainfall for the season. A second Forensic inspection is required under the same rainfall scenario, but after 20 inches of precipitation has fallen for the season. Photo-point monitoring must be conducted when the following forensic “observation triggers” occur:

- A noticeable discharge of sediment (turbidity) is observed, at any time, in any Class I or Class II watercourse.
- Detection of failed management measure or measures that caused or may cause the release of 10 cubic yards or more of sediment to watercourses.

Follow-up Forensic inspections shall be conducted when failed management measures result in significant sediment discharge and shall continue until the problem is corrected.

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Effectiveness monitoring shall be conducted following the winter period to determine the effectiveness of management measures in controlling discharges of sediment. Effectiveness monitoring inspections shall take place **after April 15 and before June 15**. Effectiveness inspections shall include both hillslope components (roads, landings, skid trails, crossings and unstable areas) and instream components (bank composition, bank stability, water clarity and instream sediment deposition).

Reporting Requirements

The discharger shall submit a summary monitoring report by July 15 for each year of Waiver coverage (after operations begin). The summary report shall include information regarding each inspection, including photographs, and shall describe how the discharger complied with the MRP requirements. The discharger shall also report as soon as possible, by telephone, but no later than 48 hours, after detection of any violation or suspected violation of Basin Plan requirements, failure of major management measures, any new landslide activity and violations of Waiver eligibility criteria and conditions. A written report is required to be submitted to the Central Valley Water Board within 14 days of the discovery.

WAIVER ENROLLMENT FEES

CWC Section 13269 allows the state or regional board to require payment of an annual fee as a condition of a timber harvest waiver. The fee schedule is to be established by the State Water Board in accordance with Section 13260 (f). The State Water Board has not established an annual fee schedule for timber harvest waivers and does not appear to be proposing such schedule in the next several months. The collection of annual fees could provide additional staff resources for the Central Valley Water Board's timber harvest regulatory program providing new positions are approved by the Administration and the collected fees are available for expenditure after appropriation by the Legislature. The proposed Order requires dischargers to pay annual fees as soon as the State Water Board establishes a fee schedule for timber harvest related activities as does the existing Waiver.

Annual fees apply to dischargers covered by WDRs, including WDRs for timber harvest activities. If WDRs were issued to all timber harvest activities, regulated dischargers would immediately have to pay fees under the fee schedule for WDRs. However, the utilization of these fees for staff resources would still be dependent upon Administration approval, as in the case of waiver fees.

A waiver of WDRs can include a waiver of the requirement to submit a report of waste discharge (RWD). Alternatively, the regional water board can require the RWD as part of process for determining waiver eligibility. In all cases where a RWD is required, the

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discharger must pay a fee with the RWD. Dischargers proposing a “new discharge” must pay a fee with the RWD, equal to the applicable annual fee in the WDRs fee schedule. (Cal. Code of Regs., tit. 23, § 2200.2.) A “new discharge” includes a discharge for which the discharger did not previously obtain WDRs. (Form 200 Instructions, Section IV.) This fee is known as the first annual fee, but essentially serves as an enrollment fee. As described above, dischargers enrolled in waivers do not have to pay annual WDRs fees. However, where a regional water board requires a RWD to determine eligibility for a waiver of WDRs, the discharger remains subject to the requirement to pay the enrollment fee with the RWD. After waiver coverage takes effect, the discharger would only pay annual fees if the State Water Board adopts a fee schedule for timber harvest waivers.

The proposed Order waives the RWD requirement for Categories 1, 2 and 5. The RWD requirement is not waived for Categories 3 and 4, as described below, so new and re-enrolling dischargers in these categories would be subject to an enrollment fee.

PROPOSED ORDER AND REVISIONS

The proposed Order renews the Waiver (Attachment A), the Monitoring and Reporting Conditions (Attachment B) and the Implementation, Effectiveness and Forensic Monitoring and Reporting Program (Attachment C).

Revisions to Waiver (Attachment A)

The basic premise of the Waiver (Attachment A), is that timber activities be conducted according to CAL FIRE and USFS regulations **and** include additional management and water quality protection measures necessary to assure full compliance with applicable Basin Plan requirements.

Staff is proposing to continue the existing waiver process (as adopted in April 2005). The specific eligibility criteria and conditions remain the same with the following proposed revisions to Attachment A:

- A new termination date for the Waiver was added (5 years from adoption)
- Enrollment fee requirements for Categories 3 and 4 were added, because these dischargers are now required to submit a RWD to enroll in the waiver
- Re-enrollment and fee requirements for projects already enrolled under Categories 3 and 4 were added (General Conditions for Waiver Categories 1 through 5, Item #8), because these dischargers are required to submit a RWD to continue coverage under the waiver

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Staff is proposing to limit the enrollment fees to Categories 3 and 4 because, along with Category 5 (federal facilities) these categories require the highest field presence and the most extensive review. Staff does not propose fees for Category 5 because this is more appropriately addressed in the statewide WQMP effort. Category 1 and most Category 2 discharges have minimal impacts on water quality, and do not warrant additional enrollment reporting or review. Category 2 includes three-acre conversions (which can include such things as removing a small number of trees to build a garage) and emergency fire salvage (where the CALFIRE exemption may be based in part on financial hardship). Although some emergency fire salvage sites may warrant a higher level of enrollment review, the Waiver structure does not provide a readily ascertainable standard to determine which particular sites should be submitting RWDs.

The re-enrollment RWD is necessary for projects currently enrolled under Categories 3 and 4 to ensure continued Waiver coverage.

Revisions to Monitoring and Reporting Conditions (Attachment B)

Attachment B was developed to provide a regulatory approach to timber harvest activity monitoring that takes into account the need to maximize protection of water quality, verifying the effectiveness of the Waiver and statutory requirements of CWC Section 13269.

The proposed revisions to Attachment B are clerical in nature and thus non-substantive.

Revisions to Monitoring and Reporting Program (Attachment C)

The MRP is flexible in that a discharger needs to comply only with the section of the MRP that is applicable to the proposed timber harvest activity. Applicability (as discussed above) is determined by the specific criteria and conditions contained in Attachment B (Monitoring and Reporting Conditions).

The revisions proposed for the MRP (Attachment C) are clerical in nature and thus non-substantive.

Future Revisions to the Waiver Staff recognizes that some minor administrative and operational issues exist with the Waiver and its process. It is, therefore, our intent to hold several public workshops to gather information on the effectiveness and functionality of the waiver and receive input on needed revisions. It is anticipated that the State Board will have finalized their statewide WQMP and subsequent waiver process for federal lands within that time frame. Staff will then be able to revise the current waiver as appropriate.

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RECOMMENDATION

Staff recommends, based upon the above discussion, adoption of the following:

- The proposed Order which renews the conditional waiver for five years and implements an enrollment fee for Categories 3 and 4
- The revised Waiver (Attachment A)
- The revised Monitoring and Reporting Conditions (Attachment B)
- The revised Implementation, Effectiveness and Forensic Monitoring and Reporting Program (Attachment C).

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